IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE AT NASHVILLE

DEAN F. SHOEMAKER V. STATE OF TENNESSEE

Direct Appeal from the Circuit Court for Davidson County
No. 07C-1675 Hamilton Gayden, Judge

No. M2008-02655-CCA-R3-HC - Filed September 3, 2009

Petitioner, Dean F. Shoemaker, appeals the trial court's denial of his petition for writ of habeas corpus. The State has filed a motion pursuant to Rule 20, Rules of the Court of Criminal Appeals of Tennessee, for this Court to affirm the judgment of the trial court by memorandum opinion. We grant the motion and affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Davidson County Criminal Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Dean F. Shoemaker, Nashville, Tennessee, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; and Victor S. (Torry) Johnson III, District Attorney General, for the appellee, the State of Tennessee.

MEMORANDUM OPINION

On November 19, 2004, Petitioner pleaded guilty to second degree murder. As part of the plea agreement, he was sentenced to thirty-five years in confinement as a Range III offender.

On June 11, 2007, Petitioner filed a pro se petition for habeas corpus relief alleging that his thirty-five-year sentence was illegal. The criminal court summarily dismissed the petition, finding that Petitioner failed to provide appropriate documentation to support his claims and that his allegations, even if true, did not render the judgment void. Petitioner now appeals.

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. Tennessee Code Annotated sections 29-21-101 through 29-21-130 codify the applicable procedures for seeking a writ. However, the grounds upon which a writ of habeas corpus may be issued are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record of the proceedings upon

which the judgment was rendered that a court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. See Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007); Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. Archer, 851 S.W.2d at 163. A void judgment is a facially invalid judgment, clearly showing that a court did not have statutory authority to render such judgment; whereas, a voidable judgment is facially valid, requiring proof beyond the face of the record or judgment to establish its invalidity. See Taylor, 995 S.W.2d at 83. The burden is on the petitioner to establish by a preponderance of the evidence, that the sentence is void or that the confinement is illegal. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). Moreover, it is permissible for a court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petitioner does not state a cognizable claim. See Summers, 212 S.W.3d at 260; Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004).

First, Petitioner argues that his sentence is illegal as a result of an improper range classification. He asserts that the trial court erroneously sentenced him as a Range III, persistent offender, when he should have been sentenced as a Range I, standard offender. We agree with the State that Petitioner has failed to attach any documentation with his petition to support this claim. Our supreme court has held that the failure to include pertinent documents with the petition may result in the trial court properly dismissing the petition without appointment of counsel and without a hearing. Summers, 212 S.W.3d at 260. Moreover, our supreme court has also held that "a knowing and voluntary guilty plea waives any irregularity as to offender classification or release eligibility," even when the sentence directly contravenes statutory guidelines. Hicks v. State, 945 S.W.2d 706, 709 (Tenn. 1997). "[A] plea-bargained sentence is legal so long as it does not exceed the maximum punishment authorized for the plea offense. Hoover v. State, 215 S.W.3d 776, 780-81 (Tenn. 2007). In this case, Petitioner was convicted of second degree murder, a Class A felony, which has a range of punishment from fifteen to sixty years. As such, the thirty-five year sentence imposed by the trial court was within the statutory limits and is valid.

Finally, Petitioner asserts that his sentence has expired because the trial court applied enhancement factors not found by a jury in violation of his Sixth Amendment rights as set forth in Blakely v. Washington, 542 U.S. 296 (2004) and Cunningham v. California, 549 U.S. 856 (2007). However, Petitioner signed a waiver of his right to have a jury determine enhancement factors, and he received the sentence that was agreed to in the plea agreement.

We also note that this court has held that Blakely violations do not apply retroactively to cases on collateral appeal. See, e.g., Bobby Taylor v. State, No. M2008-00335-CCA-R3-PC, 2009 WL 2047331 (Tenn. Crim . App., at Nashville, July 14, 2009); Billy Merle Meeks v. Ricky J. Bell, Warden, No. M2005-00626-CCA-R3-HC, 2007 WL 4116486 (Tenn. Crim. App., at Nashville, Nov. 13, 2007); Timothy R. Bowles v. State, No. M2006-01685-CCA-R3-HC, 2007 WL 1266594 (Tenn. Crim. App., at Nashville, May 1, 2007); James R.W. Reynolds v. State, No. M2004-02254-CCA-R3-HC, 2005 WL 736715 (Tenn. Crim. App., at Nashville, Mar. 31, 2005), perm. app. denied (Tenn. Oct. 10, 2005). Additionally, Blakely and Cunningham have not been applied to cases of negotiated plea agreements. See Hoover 215 S.W.3d at 779-80; Keith T. Perry v. Turner, No. W2007-01176-

CCA-R3-CD, 2008 WL 185810 (Tenn. Crim. App., at Jackson, Jan. 22, 2008), perm. to app. denied (July 7, 2008). We also note that the decisions of Blakely and Cunningham relate to constitutional violations which, even if proven true, would merely render the judgment voidable and not void. See, e.g., Meeks, 2007 WL 4116486; Bowles, 2007 WL 1266594; Donovan Davis v. State, No. M2007-00409-CCA-R3-HC, 2007 WL 2350093, (Tenn. Crim. App., at Nashville, Aug. 15, 2007), perm. app. denied (Tenn. Nov. 13, 2007). The trial court properly dismissed his claim.

Nothing on the face of the petitioner's judgment indicates that the convicting court was without jurisdiction to sentence the petitioner or that the sentence has expired. As a result, the court's summary dismissal was proper. See Summers, 212 S.W.3d at 260.

Upon review of this matter, this Court concludes that no error of law requiring a reversal of the judgment of the trial court is apparent on the record.

CONCLUSION

Accordingly, the judgment of the trial court is affirmed.

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THOMAS T. WOODALL, JUDGE